

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on January 2, 2013
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Kari Johnson, Acting Executive Officer
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary

MINUTES OF DECEMBER 19, 2012 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the December 19, 2012 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the December 19, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of cases pending before the Appeals Board)

1. 2012 RULEMAKING MATTERS

(Discuss/implement Board rulemaking changes)

ACTION: Member Lowry moved that the Board approve new proposed language for Regulation 354(b) for notice of publication of the 15-day comment period. Member Freyman seconded. The Board approved new proposed language for Regulation 354(b) for notice of publication of the 15-day comment period.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

1. 2012/2013 BUDGET:

(Review and discuss budget issues for the fiscal year)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: No report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

ACTION: Acting Executive Officer Kari Johnson reported that the Board is preparing materials to post the position of Executive Officer. She is also continuing to follow up on continuing projects including ORACLE testing and the West Covina telephone installation.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

ACTION: No report.

PUBLIC COMMENT:

(Public comment will be entertained during the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

BLESSING & HARVEY PROFESSIONAL SERVICES, INC., DBA EARNIE'S
PLUMBING & SEWER SERVICE AKA EARNIES PLUMBING, 11-R2D2-2332

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge, as amended. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge, as amended.

JOSE MENDOZA PAINTING, 11-R1D4-1837 THROUGH 1839

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

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OGLE'S CUSTOM CABINETS, 10-R2D5-3975 THROUGH 3978

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

SEOUL GOM TANG KOREAN RESTAURANT, INC., 11-R1D4-0137 AND 0138

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

TL PAVLICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310

ACTION: The Board agreed to hold this matter for discussion at the next meeting.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

A-1 METAL PRODUCTS, 12-R6D2-1639 THROUGH 1646

ALSCO INC., 12-R6D2-2815 THROUGH 2820

AMPCO SYSTEM PARKING, INC., 11-R1D1-0863 *

AMERICAN JEWISH UNIVERSITY, 12-R4D1-0995

BALL CORPORATION, 12-R2D2-1417 THROUGH 1418

BAYLESS ENGINEERING & MANUFACTURING, 12-R4D3-0790 AND 0791

BEARD ELECTRIC, 12-R3D6-2474 *

BEDROSIANS, 12-R3D1-2738

BENSON INDUSTRIES, LLC., 12-R1D1-2022

BINS BINS BINS, INC., 12-R4D3-1366 THROUGH 1368

BOGHOSIAN RAISIN PACKING CO INC., 11-R2D5-1695 AND 1696

BRAGG INVESTMENT CO., INC. DBA BRAGG CRANE SERVICE, 11-R1D4-2956
THROUGH 2957 *

CENTRAL VALLEY MEAT CO. INC., 11-R2D5-2196 THROUGH 2200

CHRISTISON COMPANY, 11-R1D1-1040 THROUGH 1041

CITY OF RICHMOND, 12-R2D2-1560

DANMAR, INC., 10-R6D7-2605 AND 2606

DFS FLOORING INC., 12-R6D2-0292 AND 0293

DINYARI INCORPORATED, 12-R1D2-0594 THROUGH 0596

FJF CAPITAL GROUP, INC., 12-R6D5-1657

GIB, LLC DBA BRAZILIAN BLOWOUT, 11-R4D3-2042 AND 2043

H.A.D.D. INC DBA ALLIANCE ELECTRIC, 11-R2D1-1263

HUMBOLDT COUNTY HEALTH AND HUMAN SERVICES, 12-R2D1-2149

HYATT AT FISHERMAN'S WHARF, 11-R1D1-2885 THROUGH 2887 *

INTEGRAL ENGINEERING & FABRICATION INC., 11-R6D2-2242 THROUGH 2249

INX DIGITAL INTERNATIONAL CO., 12-R2D2-1483

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IRON INDUSTRIES, INC., 12-R2D5-0433 THROUGH 0435
JD2/ISE INNOVATIVE STEEL ERECTORS, 12-R2D2-0775
K H S & S OF CONCORD, INC., 11-R2D2-0374 TO 0375
KENNERLEY-SPRATLING, INC., 12-R1D4-1479
GEORGE ARNOLD KALMAR, 11-R1D4-1643
LAGUNA BEACH COUNTY WATER DISTRICT, 11-R3D1-2172
RAY JOSE LLAMAS DBA LLAMAS AG LABOR CONTRACTING, 12-R2D5-0155
LYONS MASONRY, INC., 11-R6D2-2756 THROUGH 2758
JEFFREY MACKIN, 11-R2D1-0404 THROUGH 0409
NORMAN CROW FARMS DBA ORESTIMBA NURSERY, 12-R2D4-1933
N&T INC., 11-R2D3-2168
PARK VICTORIA APARTMENTS, 12-R3D6-1327
PHOENIX CONTAINER CORP, 12-R2D4-1700 AND 1701
PR FARMS, 12-R2D5-2904
PRINTING CONSULTANT GROUP INC. DBA DT GRAPHICS, 12-R3D6-0573
RED ROBIN INTERNATIONAL INC DBA RED ROBIN AMERICA'S GOURMET
BURGER, 12-R2D2-1798
RING POWER CORPORATION DBA PHOENIX PRODUCTS, 12-R2D4-1931 AND 1932
SAN RAMON VALLEY FIRE PROTECTION DISTRICT, 12-R2D2-1528
SAN RAMON VALLEY USD, 12-R2D2-1561
SC SHEET METAL, INC., 12-R4D3-0902 THROUGH 0905
SIERRA ALUMINUM CO. INC., 12-R3D3-2926
S & M ENGINEERING, INC., 12-R1D2-1857 *
THIR COAST SUINEAR, INC., 12-R1D1-1339 *
T-MOBILE USA, 12-R2D2-1861
TURNUPSEED ELECTRIC SERVICE, INC., 11-R2D5-2131
UNIQUE SIGNS USA INC., 12-R3D1-1678 AND 1679 *
VENICE TRADING CO., INC. DBA DINA MERI, 12-R3D1-1624 AND 1625
VITALITY FOODSERVICE, INC. DBA NESTLE PROFESSIONAL VITALITY,
12-R1D4-3141
WAL-MART ASSOCIATES INC., 12-R3D2-2747 AND 2748
WAL-MART STORES, INC., 12-R2D5-0915
WESTFIELD LLC., 11-R6D2-2785 THROUGH 2788
WOODMILL SEATING, INC., 12-R3D6-0960 *

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended

PETITIONS FOR RECONSIDERATION:

SOUTHERN CALIFORNIA EDISON, CO., 12-R3D3-0499

ACTION: The Board agreed to hold this matter for discussion at the next meeting.

LUI'S ENTERPRISE CONSTRUCTION, CO., 12-R3D1-9141

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

PRESTON PIPELINES, INC., 11-R2D4-2530

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
AC TRANSIT, 08-R1D4-0135
AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445
AND 3448
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
COUNTY OF ALAMEDA, GENERAL SERVICES AGENCY, 11-R1D4-3064
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
EZ MIX, INC., 08-R4D3-1898
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272

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IRWIN INDUSTRIES, 08-R6D4-1454
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
MARINE TERMINALS, 08-R6D2-1920
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0364

ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
PERSONNEL PLUS, INC., 11-R3D5-1302
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
VAN EVERY CONSTRUCTION, INC., 11-R1D4-0936 AND 0937

LEGISLATION:

ACTION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

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1. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
2. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
3. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
4. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430 (09- 9280/9281)
5. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)
6. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
7. SMUD, 34-2010-80000723 (08-R2D1-4887)
8. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
9. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
10. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
11. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
12. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
13. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
14. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
ACTION: Chief Counsel Jeff Mojcher reported that he will be attending a hearing on this matter next week.
15. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
16. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
17. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
18. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)

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19. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
20. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
21. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
22. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
23. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
24. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
25. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
26. PRESTON PIPELINES, INC., 34-8012-80001277 (09-R6D7-3345)
27. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
28. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
29. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
30. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)

ACTION: Chief Counsel Mojcher reported that this writ was filed in Alameda County.

PERSONNEL: *(Issues regarding staff)*

ACTION: Acting Executive Officer Kari Johnson discussed personnel matters.

The Closed Session adjourned at 12:37 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 12:38 p.m.